

# BOARD OF ADJUSTMENT MINUTES

DATE: June 25, 2007



1<sup>ST</sup> FLOOR  
NORTH CONFERENCE ROOM  
CITY HALL

Type of Meeting: PUBLIC HEARING

Chairman Paul Smith called a regular meeting of the Board of Adjustment to order at 2:00 p.m. Mr. Smith read the opening statement explaining the functions of the Board of Adjustment. Everyone giving testimony regarding a case before the Board was duly sworn. Notice was previously mailed to all required parties.

## BOARD MEMBERS PRESENT:

Chair - Paul Smith.....X  
Tom Muncy.....X  
Beverly Robinson..... X  
Richard Fort ..... X  
Robert Middlemas..... ABSENT  
Doug Thrash.....X

CASE	STAFF PRESENTING CASE	GRANTED/DENIED/ CONTINUED
1. 20 Duke Street	Stuart Rohrbaugh	DENIED
2. 92 Kimberly Avenue	Stuart Rohrbaugh	GRANTED
3. Town Square Boulevard	Shannon Tuch	GRANTED
5. 1865 Hendersonville Road	Christine Logan	Continued to the July 23, 2007 meeting
5. 966 Tunnel Road	Julia Cogburn	City of Asheville decision reversed
6.		
7.		
8.		

## Additional Information

STAFF PRESENT: Martha McGlohon, Bob Oast, Beverly Williams, Shannon Tuch, Stuart Rohrbaugh, Julia Cogburn, William Slawter

**CASE #** 1

**ADDRESS:** 20 Duke Street

**PETITIONER:** Jason & Tania Wells

**PIN #** 9648.16-94-2956

**REQUEST:** Petitioner is requesting a variance of Section 7-8-4(f) (5) of the Unified Development Ordinance in order to construct a new single-family residence on the above referenced property.

**Variance:** Petitioner is requesting a street side setback variance of seven and half feet in lieu of the minimum required street side setback of seven and half feet. This request would allow he proposed new home to be constructed on the right-of-way line of Marne Road (zero setback).

**Background:**

A Development Application for the proposed new home was submitted and disapproved in May, 2007 (#07-2213). The petitioner supplied survey shows a proposed carport that extends within the minimum required street side setback to the edge of the right-of-way of Marne Road. The proposed structure was designed to be pushed forward towards Duke Street in the same building line as the two existing homes (2 & 4 Duke Street). The Board does not need to take action on the front encroachment as UDO Section 7-10-2(e) allows for the front setback to be adjusted in this manner. The new corner lot was created when the petitioner filed a subdivision earlier this year. Lot (B), the new corner lot, was created from a portion of what remains and is labeled as Lot (A). Petitioner submitted this variance application to seek relief from the above referenced minimum setback requirement.

**DISCUSSION:** Stuart Rohrbaugh presented the case to the Board and stated that the property is zoned RS-8. Mr. Rohrbaugh stated that the subject lot is significantly smaller than other lots along Duke Street and portions of the lot are sloping to steep terrain.

Mr. Rohrbaugh stated that if the home were design different the home could be built in conformance with the minimum required setback.

Staff recommended that the requested setback variance be denied as it appears the petitioner has other options for locating the home on the lot.

Jason Wells addressed the Board and stated the lot was subdivided in May, 2007. The took care that the house would fit in the neighborhood. The petitioner stated the home will include a carport which makes it proposed structure non-conforming.

After a short discussion the Chairman called for a motion.

Opened Public Hearing: 2:04 p.m.  
 Closed Public Hearing: 2:14 p.m.

Motion: Richard Fort moved to deny the request.	2 <sup>nd</sup> By: Tom Muncy	VOTE:
		4- 1
Paul Smith		Aye
Tom Muncy		Aye
Robert Middlemas		Absent
Beverly Robinson		Nay
Richard Fort		Aye
Doug Thrash		Aye
The variance request was denied.		

CASE # <u>2</u>
ADDRESS: 92 Kimberly Avenue
PETITIONER: Edward J. & Barbara Biedenbach
PIN # 9649.06-47-9679

**REQUEST:** Petitioner is requesting a variance of Section 7-8-3 (f) (5) of the Unified Development Ordinance in order to construct an addition to an existing single family home at the above referenced property.

**Variances:** Petitioner is requesting a side setback variance of 3.6' from the side setback in lieu of the minimum required setback of 10'. This request would allow the proposed addition to the home to be 6.4' from the side property boundary line.

**Background:**

The structure is non-conforming (constructed sometime in the 1920's) where the rear right side portion of the home already encroaches within the required side setback. A Development Application for the proposed addition was submitted and disapproved in April 2007 (#07-1801). The petitioner supplied survey shows the proposed addition would expand the footprint of the non-conforming structure in a way to extend the same building line that already encroaches into the required side setback. Petitioner provided two different measurements to take into account a proposed tapered column detail at the corner of the addition. The proposed main foundation wall of the addition will be constructed 7.9' from the side line. The proposed tapered column of the addition will be constructed 6.4' from the side line. Petitioner provided two different surveys.

Recommend the Board refer to the Hutchison-Biggs & Associates, Inc survey dated 05/02/07 to show the proposed addition. Petitioner submitted this variance application to seek relief from the above referenced minimum setback requirement.

**DISCUSSION:** Stuart Rohrbaugh presented the case to the Board and stated the existing structure already encroaches within the required setback. The dimensions of the lot were established before the petitioner purchased the property. The proposed new foundation wall extends in the same building line as other portions of the structure that already encroach. The requested variance is the minimum necessary to afford relief to the petitioner and staff recommends approval.

Opened Public Hearing: 2:15 p.m.  
Closed Public Hearing: 2:22 p.m.

Motion: Beverly Robinson moved to grant the variance as requested.	2 <sup>nd</sup> By: Doug Thrash	VOTE:  5 - 0
Paul Smith		Aye
Tom Muncy		Aye
Robert Middlemas		ABSENT
Beverly Robinson		Aye
Richard Fort		Aye
Doug Thrash		Aye
The variance was granted.		

CASE # \_\_3

ADDRESS: Town Square Boulevard (Schenck Parkway (Biltmore Park Town Center)

PETITIONER: Lee Thompson (representative for Biltmore Farms)

PIN # 9645.03-10-5356

**REQUEST:** The petitioner is requesting a variance to Section 7-8-23 (f) (10) to allow for the construction of a new six-story building without the required 10' building setback at the 4<sup>th</sup> story.

The proposed use is a 160-room hotel that is seeking to modify the Urban Village standards for building height. The standard reads, "Any structure taller than 4-stories shall be designed with a cornice at the fourth story level, with those portions of the structure taller than four stories being set back a minimum of ten feet from the cornice level....". The applicant has submitted building elevations demonstrating a lesser set-back (or step-back) at the second story on two sides with fenestration and building articulation at the fourth story. Additionally, it is important to note that the lower ceilings of the room floors results in a cumulative height that is not significantly taller than the adjacent 4 story building (see color rendering of building elevations).

Staff has considered revising the development standards for height that would remove the need for a variance in this circumstance; however, concerns over the potential impact of such a change in other circumstances, outweighs the desire for flexibility for this particular project.

**Subject Site Description:** The subject building is part of the larger Biltmore Park Urban Village commonly referred to as Town Center West. The Urban Village development standards allow for some taller structures with special provisions to help provide compatibility with the rest of the village and enhance pedestrian comfort and interaction. The intent of the height standard is to allow for some variation and flexibility but to ensure that the predominant height of structures remain between two and six stories.

**DISCUSSION:** Shannon Tuch presented the case to the Board and stated that this request deals with a step-back. In the Urban Village District a step-back is called for in a building as it goes up in height to actually step-in. The property is in the Biltmore Park Urban Village. The structure will house a six story hotel. The majority of the buildings in the Village are between two and four stories. The requirement requires a building step-back at the fourth story.

The hotel site drops off in elevation along the west side which could force the relocation of the accessible entrance. Additionally, the lower ceiling heights of the room floors results in a net height comparable to the adjacent four story building. The intent of this subsection is to prevent the canyon effect sometimes felt from tall buildings and to force the integration of taller buildings with other buildings in the village. The applicant's limited use of step-back at the second story, use of various building materials, and façade fenestration results in a building with significant detail and relief that is well integrated with the adjacent building and other buildings in the village. Because the hotel utilizes lower ceilings than many other uses, the cumulative height of the building is not significantly taller (2+ feet) than the other four story buildings in the village.

The applicant could redesign to provide a step-back or some portion of a step-back; however, this would likely result in a loss of rooms or a taller structure.

Staff recommends approval of this variance given the context of the site, the intent of the development standards, and the projects ability to largely comply with the findings.

After a brief discussion the Chairman called for a motion.

Opened Public Hearing: 2:25 p.m.  
 Closed Public Hearing: 2:33 p.m.

Motion: Tom Muncy moved to grant the requested variance.	2 <sup>nd</sup> By: Beverly Robinson	VOTE: 5 – 0
Paul Smith		Aye
Tom Muncy		Aye
Robert Middlemas		Absent
Beverly Robinson		Aye
Richard Fort		Aye
Doug Thrash		Aye
The variance was granted.		

CASE # 4
ADDRESS: 1865 Hendersonville Road PETITIONER: Ingles Market PIN # 9655 09-15-0411

REQUEST: The petitioner asked that this case be continued to the July 23, 2007 public meeting.

Motion: Tom Muncy moved to continue to the July 23, 2007 public hearing.	2 <sup>nd</sup> By: Richard Fort	VOTE: 5 – 0
Paul Smith		Aye
Tom Muncy		Aye
Robert Middlemas		Absent
Beverly Robinson		Aye
Richard Fort		Aye
Doug Thrash		Aye
This case was continued to the July 23, 2007 meeting		

CASE # \_5\_

ADDRESS: 966 Tunnel Road

PETITIONER: Monmovmin, LLC, Ronald E. Sneed Agent

PIN # 9658.08-97-8925

**REQUEST:** The petitioner is challenging the interpretation of City Code Section 7-7-8 (copy attached) by the City of Asheville regarding the use of the property at 966 Tunnel Road. This property was the subject of conditional zoning approval by the City Council of the City of Asheville on December 13, 2005 (Ordinance No. 3312; copy attached). Council approval was subject to a number of conditions including a condition stating that "principal uses are limited to residential and office uses."

In February of 2007 it came to the attention of the City Planning and Development Department that in addition to operating an office for their business on the property in question, the owners of the property had rented space to a massage therapist. Planning staff sent the owners a notice of violation on April 10, 2007 (copy attached.)

Section 7-7-8 ( c ) (4) of the Code states with the respect to conditional zoning that "No uses shall be permitted except those enumerated in the ordinance adopting the conditional zoning." Massage therapy is not one of the uses permitted on the subject property by Ordinance No.3312.

**DISCUSSION:** Bob Oast presented the case to the Board and stated that City Council adopted a conditional zoning ordinance in December, 2005. In that ordinance the uses were limited to residential and office use.

Mr. Oast questioned Julia Cogburn regarding this case. Ms. Cogburn stated a complaint had been received regarding this site. and submitted certified copies of Exhibit 1, 2, 3, 4, 5, 6, 7 for the Boards information ( Brief History; Ordinance No.3312; Ordinance Sec. 7-11-3; Ordinance Sec. 7-11-2; Ordinance Sec. 9 --Article III. Massage Therapy Regulations; Ordinance Sec. 7-7-8 (with amendments from ordinance #3374); Code -Art. 19- Development (160A-382). Mr. Oast questioned Shannon Tuch regarding the ordinances, the land use impact table, and the permitted use of the site.

The following people spoke in opposition to the use of the site as a massage therapy business: Dian Hankins, William (resident of Governor's View), Mike Moody, Vivian Gaddy, Debbie Applewhite,

Terry Hastenings, owner of 966 Tunnel Road spoke in support of the business use.

Mr. Sneed questioned City staff and presented Exhibit for the Boards information.

Mr. Oast and Mr. Sneed presented closing statements and the Chairman called for a motion from the Board.

Opened Public Hearing: 2:40 p.m.

Closed Public Hearing: 4:25 p.m.

Motion: Beverly Robinson moved to reverse the City of Asheville's decision.	2 <sup>nd</sup> By: Doug Thrash	VOTE: 4 - 1
Paul Smith		Aye
Tom Muncy		Aye
Robert Middlemas		Absent
Beverly Robinson		Aye
Richard Fort		Nay
Doug Thrash		Aye
The City of Asheville's decision was reversed.		

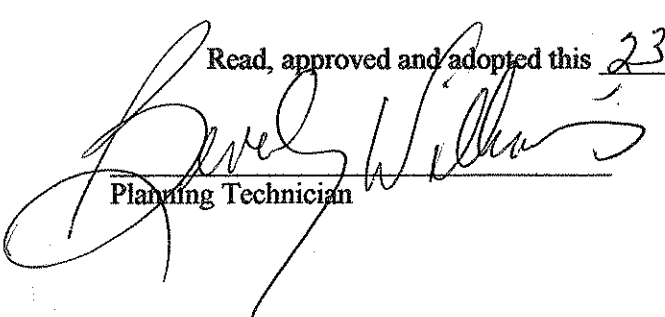
#### Additional Information

OTHER BUSINESS: The minutes from the April 23<sup>rd</sup> and May 21<sup>st</sup>, 2007 meetings were approved unanimously. Tom Muncy made the motion which was seconded by Richard Fort.

MEETING:

ADJOURNED: 4:31 p.m.

Read, approved and adopted this 23 day of July, 2007.

  
Planning Technician

  
Chairman